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Attorney for Plaintiff  
WAYNE BERRY

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

WAYNE BERRY, a Hawaii citizen;	)	Civ. No. CV03 00385 SOM-LEK
	)	(Copyright)
Plaintiff,	)	
	)	
vs.	)	<b>PLAINTIFF WAYNE BERRY’S</b>
	)	<b>MOTION <i>IN LIMINE</i> TO</b>
HAWAIIAN EXPRESS SERVICE,	)	<b>EXCLUDE EVIDENCE OF ANY</b>
INC., a California corporation; et al.	)	<b>TESTIMONY OF MARTIN</b>
	)	<b>WALKER (Plaintiff No. 2).</b>
	)	
	)	
	)	<u>Hearing:</u>
	)	DATE: February 24, 2006
Defendants.	)	TIME: 2:00 p.m.
	)	JUDE: Hon. Susan Oki Mollway
	)	
	)	Trial Date: February 28, 2006
	)	
	)	
	)	
	)	

**PLAINTIFF WAYNE BERRY'S MOTION IN LIMINE  
TO EXCLUDE ANY TESTIMONY MARTIN WALKER**

Comes now Plaintiff WAYNE BERRY, by and through his attorneys, Lynch Ichida Thompson Kim & Hirota, and moves *in limine* and as supplement to the earlier filed motion that sought to exclude the testimony of Fleming-PCT Expert Martin Walker regarding any issue including damages.

The motion is brought on the grounds that the Fleming-PCT continues to refuse to turn over the initial materials provided to Walker in March 2005 and has continued to produced other withheld documents one week after the Court's February 7, 2006 deadline.

In addition, Mr. Walker's apparent admission that he knew all along that his report was false and that the infringing software contained numerous changes and not the seven he claimed in his report, should bar him from any testimony in any Federal court. As set forth in the supporting papers there is compelling evidence that Walker had a copy of the relevant software as early as March 2005, and did not make any mention of this material evidence in any of his expert reports. Even if it was not the software, his failure to disclose all of the materials he considered is grounds to bar him at trial.

This motion is made pursuant to Rules 401, 402 and 403 of the Federal Rules of Evidence, and Rule 26 of the Federal Rules of Civil Procedure and is

based on the memorandum of law attached hereto, the declaration in support and the records and files herein, and such other matters as may be presented to the Court at the hearing of this matter.

Dated: Honolulu, Hawai'i February 22, 2006.

/s/ Timothy J. Hogan  
TIMOTHY J. HOGAN  
Attorney for Plaintiff WAYNE BERRY